

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Order entered: 1/8/2007

**ORDER RE: ENERGY EFFICIENCY CHARGE EXEMPTION MECHANISM**

**I. INTRODUCTION**

The Energy Efficiency Charge ("EEC") is a volumetric charge that is assessed on electric bills throughout Vermont. The funds collected via the EEC support cost-effective energy efficiency services delivered by Vermont's Energy Efficiency Utility ("EEU").<sup>1</sup> In 2005, new legislation required the Public Service Board ("Board") to establish a mechanism under which customers could apply for an exemption from paying some or all of the EEC amounts that they would otherwise owe. This Order establishes the broad outlines of such a mechanism and creates a Working Group to provide recommendations to the Board on certain technical issues related to the mechanism. The Board's goal is to finalize the remaining issues associated with the implementation of the mechanism by mid-2007, thereby allowing customers an opportunity to apply for an exemption from the 2008 EEC.

**II. PROCEDURAL HISTORY**

Act 61<sup>2</sup> became law in July 2005. This legislation includes three provisions that relate to energy efficiency.

- It removed the previous statutory cap on the EEU budget of \$17.5 million, and established new criteria for the Board to consider when determining the EEU budget.
- It required the Board to develop a mechanism under which customers could apply for an exemption from paying some or all of the EEC.
- It authorized the Board to consider developing a combined heat and power program that could be funded via the EEC.

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1. Efficiency Vermont delivers the EEU's services throughout most of the State. The City of Burlington Electric Department ("BED") delivers most of the EEU's services in its service territory.

2. Public Act No. 61 (2005 Vt., Bien. Sess.).

This Order addresses the second of these provisions.<sup>3</sup>

Act 61 added the following language regarding an EEC exemption mechanism to 30 V.S.A. § 209(d)(4):

The board, by rule or order, shall establish a process by which a customer may apply to the board for an exemption from some or all of the charges assessed under this subdivision. The board shall establish criteria by which these applications shall be measured. Any such exemption shall extend for a period of time not to exceed one year. In addition, the board may authorize exemptions only if, at a minimum, a customer demonstrates that, during the preceding year, it implemented an extraordinary amount of cost-effective energy efficiency at the customer's own expense or incurred extraordinary costs on those measures and the customer did not and will not receive reimbursement for those measures from the entity designated by the board under this section.

In August 2005, the Board began an extensive process to implement the various provisions of Act 61. This process included several workshops, submission of new studies and other analyses by various participants, and many opportunities for participants and members of the public to file written comments.<sup>4</sup>

Because this process was not a formal docket, there were no parties and no deadlines for intervention. Rather, anyone who wished could at any time participate in the proceedings. In this Order, we use the term "participants" to refer to all those who filed formal written comments or who asked to be included on the Board's e-mail service list for this process, regardless of the extent to which they actually attended the workshops. The current version of this e-mail service list is attached as Appendix A.

As part of this workshop process, on December 20, 2005, the Vermont Department of Public Service ("DPS") filed a conceptual proposal for an EEC exemption mechanism, along with a recommendation that the Board and other parties revisit with the Legislature the

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3. The first provision was addressed in the Board's August 2, 2006, and September 25, 2006, Orders regarding the EEU budgets for 2006, 2007, and 2008. The third provision was addressed in the Board's January 8, 2007, Order regarding EEU's Participation in Combined Heat and Power Projects.

4. This process was not conducted as a contested-case proceeding. A contested case, pursuant to the Vermont Administrative Procedures Act, is one "in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency *after an opportunity for hearing*." 3 V.S.A. § 801(b)(3)(emphasis added). By statute the Board is to determine an appropriate EEU budget amount "by rule or order," with no requirement that there be an opportunity for hearing. 30 V.S.A. § 209(d)(4).

advisability of instituting this program.<sup>5</sup> The DPS's conceptual proposal for an EEC exemption mechanism includes three components: measurement criteria; project eligibility criteria; and a timeline for applying and reviewing exemption applications. The DPS's recommendations are described in more detail below.

The University of Vermont ("UVM") filed a response to the DPS's proposal on January 25, 2006. UVM's recommendations focused on two areas: enlarging the scope of projects that would enable a customer to qualify for an EEC exemption; and the need to clarify the definition of the term "extraordinary amount of cost-effective energy efficiency."

Ben & Jerry's filed a response to the DPS's proposal on February 9, 2006. Ben & Jerry's recommends that the Board develop an EEC exemption mechanism that is based upon a customer's ability to achieve savings more cost-effectively than the EEU, and that the avoided EEC payments be used to determine the minimum amount spent on efficiency projects.

### **III. DISCUSSION**

The purpose of this Order is to establish the EEC exemption mechanism required by Act 61. While we agree with the DPS's concerns regarding the effect of implementing such a mechanism, we do not address in this Order the DPS's recommendation that the Board and other parties revisit with the Legislature the advisability of instituting such a mechanism. Rather, this Order focuses on creating the statutorily-required EEC exemption mechanism, while attempting to minimize, to the extent possible, any potential adverse effects on the EEU program.<sup>6</sup>

30 V.S.A. § 209(d)(4) requires the Board to: (1) establish criteria by which customer applications shall be measured, including specific criteria listed in the statute; and (2) establish a

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5. The DPS stated in its filing that it provided a conceptual proposal for an EEC exemption mechanism in response to a request from the Board in the Act 61 workshop process. However, the DPS added that it believes the "potential results will be minimal at best" and "the program has the potential to alter and complicate the focus of our successful efficiency program." As a result, the DPS "urges the Board and the other parties to revisit with the Legislature the advisability of instituting this program." Memorandum from Robert Ide, Energy Efficiency Director, DPS, to Board, dated December 20, 2005, at 5.

6. This Order does address an implementation issue associated with the current statutory language. The specific concern involves the mismatch between the requirement that a customer take certain actions "during the preceding year" in order to be eligible for an EEC exemption in the following year, and the schedule for calculation of the annual EEC rates. This issue is discussed in Section III.B, below.

process by which a customer may apply for an EEC exemption. In addition, the Board must determine whether an exemption would apply to some or all of the EEC charges that a customer would otherwise owe. We discuss these three items in turn.

### **A. Criteria for Measuring Customer Applications**

The statute lists two criteria that an application for an EEC exemption must meet. First, the customer must have, during the preceding year, implemented an extraordinary amount of cost-effective energy efficiency at the customer's own expense, or incurred extraordinary costs on those measures. Second, the customer must not have received (or receive in the future) reimbursement for those measures from the EEU. It is easy to determine whether an application meets the second of these criteria, but as both the DPS and UVM point out, the first is more challenging. The key issues are: (1) what is an eligible energy efficiency project; (2) what is an extraordinary amount of energy efficiency; and (3) what are extraordinary costs for energy efficiency.

#### *Eligible Energy Efficiency Projects*

The DPS and UVM disagree about what type of projects should be considered to be "energy efficiency" for the purpose of applying for an exemption from the EEC. The DPS argues that, generally, qualifying projects should be those that would otherwise qualify for assistance from the EEU. The DPS contends that net metered installations and distributed generation installations would not qualify. The DPS also asserts that combined heat and power ("CHP") projects would not qualify unless and until such time as assistance for CHP projects is included in the activities funded by EEC collections.

UVM argues that eligible projects should include all cost-effective electric energy savings options, including efficiency and conservation opportunities, load control strategies, and CHP projects developed by or at the customer's premises. UVM believes that one of the benefits of an EEC exemption process is that it will encourage customers to seek out efficiency opportunities that are not being addressed by the EEU. Therefore, UVM recommends that the EEC exemption

mechanism should encourage customers to capture efficiency opportunities presented by their unique facilities and operations.

We are persuaded that it is appropriate that investments in end-use efficiency measures, not supply-side opportunities (even those that could be located on a customer's premises), support an exemption from the EEC. These are the same type of projects for which assistance is provided by the EEC. While Act 61 authorized the Board to consider whether to establish a CHP program that would be funded by the EEC, in our January 8, 2007, Order, we concluded that we would not do so at this time, in part because other funding sources may be available for such a program. As a result, we conclude that CHP projects should not be eligible to support an EEC exemption.

The DPS also recommends that in order for an energy efficiency project to be eligible to support an EEC exemption, it must meet the following additional criteria:

1. The project was completed, and monies encumbered or paid in the previous calendar year;
2. The project is cost-effective using the societal test, determined by use of the statewide screening tool;
3. The project must have a benefit/cost ratio greater than 1.0, including only electric resource benefits;
4. The project must have a simple customer payback no shorter than 18 months;
5. The customer has not and will not receive reimbursement for all or part of the costs from Efficiency Vermont, BED, Vermont Gas Systems, a Vermont distribution utility or other federal, state, or local grants, including federal, state, or local tax incentives that are available or may become available; and
6. The customer has not implemented the same measures at any of its facilities since the beginning of the year 2000.

The first of these criteria is directly linked to the statutory requirement that the energy efficiency measures be implemented during the previous year, and we find it to be reasonable. The next two criteria implement the statutory requirement that the energy efficiency measures be cost-effective, and we find them to be reasonable. The fourth criteria is consistent with the general principle that if the simple customer payback is less than 18 months, the customer should make the investment on its own, without assistance from the EEU. If the customer would make

the investment anyway, there is no need for other Vermont ratepayers to provide the customer with an incentive to do so.<sup>7</sup> We are persuaded this criterion is also reasonable.

We find only part of the fifth of the DPS's criteria listed above to be reasonable. The statute clearly states that the customer may not receive reimbursement from the EEU (which could be Efficiency Vermont or BED, depending on the customer's location) for a project. The same principle — if ratepayer funds pay for part of a customer's energy efficiency investment, the project is not eligible to support an EEC exemption — applies to reimbursements from Vermont Gas Systems or a Vermont distribution utility. Such reimbursements would also be from ratepayer funds, and it would be inequitable for utility ratepayers to pay for a portion of a customer's project while allowing the customer who benefitted to be exempt from supporting other customers' projects. However, we are not convinced that a project should be ineligible to support an EEC exemption if a customer received a federal, state, or local grant or tax incentives related to the project. Such grants and tax incentives are funded by taxpayers, not ratepayers, so we do not have the same equity concerns.<sup>8</sup> In addition, restricting the eligibility of a project to support an EEC exemption based upon whether the customer received a related government grant or tax incentive would be inconsistent with how such grants and tax incentives are treated by the EEU — that is, customers who receive government grants or tax incentives are still eligible for assistance and incentives from the EEU. It is appropriate for government grants and tax incentives to be treated in a similar manner, regardless of whether it is to allow a customer to receive services from the EEU or to receive an EEC exemption.

We also are not persuaded that the last of the DPS's criteria listed above is reasonable. The DPS's filing does not explain the rationale for this requirement. One possible reason for such a requirement is that if a customer has recently installed a particular measure in one of its facilities, it would not be "extraordinary" for a customer to install the same measure in another of its facilities. However, this argument does not relate to the question of whether measures should

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7. As a practical matter, it is unlikely that a project that resulted in either an extraordinary amount of energy efficiency or the customer incurring extraordinary costs (as required by the statute) would fail to meet this criteria.

8. Presumably the customer who receives the grant or tax incentive will continue to pay taxes, thereby supporting other customers' projects.

be eligible for an exemption, but instead relates to how to define either an extraordinary amount of energy efficiency or extraordinary costs associated with installing energy efficiency measures. We define these criteria later in this Order, and do not include this requirement in those definitions. Rather, the definitions focus on meeting objective energy efficiency savings goals or on spending a certain amount on energy efficiency measures. We conclude that if the volume of savings or the amount of expenditures meet these definitions, it should not matter whether the customer has recently installed the same measure in one of its facilities.

Another possible reason for such a requirement could be that if a customer installed the same measures at some of its facilities since 2000 (the year of the EEU's creation), the customer probably received technical assistance and incentives from the EEU, and this technical assistance with a prior project helped support the customer's current decision to install the measures at additional facilities (in other words, all ratepayers contributed to the current project's costs). However, we conclude that even if the EEU provided technical assistance in the past, ratepayers as a whole are not incurring any new costs, even though they will benefit if the customer now acquires an extraordinary amount of energy efficiency or incurs extraordinary costs for extraordinary efficiency. Therefore, for the purpose of determining whether an energy efficiency investment is eligible to support an EEC exemption, it does not matter whether the customer has installed the same measures at any of its facilities since 2000, as long as the project provides an extraordinary amount of energy efficiency or causes the customer to incur extraordinary costs for energy efficiency, as defined below.

#### *Extraordinary Amount of Energy Efficiency*

The DPS recommends that the Board look to external benchmarks to determine what an extraordinary amount of cost-effective energy efficiency is. Some possibilities mentioned by the DPS in its filing are: criteria for tax deductions in the Federal Energy Policy Act of 2005,<sup>9</sup>

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9. The Federal Energy Policy Act of 2005 provides a tax deduction for new commercial buildings that reduce energy use by 50 percent relative to ASHRAE 90.1. ASHRAE is the American Society of Heating, Refrigerating and Air-Conditioning Engineers. It develops standards for both its members and others professionally concerned with refrigeration processes and the design and maintenance of indoor environments. Standard 90.1 provides

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Leadership in Energy and Environmental Design ("LEED") certification performance criteria,<sup>10</sup> and Energy Star homes criteria for existing homes.<sup>11</sup> We are persuaded that the use of objective energy efficiency "stretch" standards that have been developed for other purposes represents a reasonable threshold for being considered extraordinary and will provide the guidance UVM is seeking. Using such standards will enable customers to determine, prior to making an efficiency investment, whether the investment will meet the standard required by the statute.<sup>12</sup>

However, we lack sufficient information regarding exactly which standards should be used. The DPS suggested several possible standards in its filing, but did not recommend which of these standards should be adopted by the Board. Therefore, we will create an informal Working Group to provide the Board with recommendations on which technical standards should be used. We will require Efficiency Vermont, BED and the Contract Administrator to participate in this Working Group, and we hope the DPS will participate as well. Other parties are also welcome to participate.

#### *Extraordinary Costs for Energy Efficiency*

As the DPS pointed out in its comments, defining what constitutes "extraordinary costs" is more difficult. We are persuaded that it is appropriate to develop a standard formula to make it simple for customers and regulators to determine whether costs are extraordinary.

The first step is to determine what are the costs of the energy efficiency measures. Traditionally, energy efficiency programs around the country consider the cost of the energy

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9. (...continued)  
minimum requirements for the energy-efficient design of buildings except low-rise residential buildings.

10. The LEED Green Building Rating System is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings.

11. Energy Star homes criteria are established by the U.S. Environmental Protection Agency. Energy Star qualified homes are at least 15% more energy efficient than homes built to the 2006 International Energy Conservation Code (IECC).

12. Because we agree with the DPS and UVM that the term "extraordinary amount of cost-effective energy efficiency" should be defined, and we propose a means of clearly defining it, we do not accept UVM's alternate recommendation that the Board establish a process that allows customers to bring project proposals to the Board to determine if they will qualify to support an EEC exemption if developed. Our goal is to create an EEC exemption mechanism that is understandable by customers so they can make their investment decisions without additional guidance from the Board.



efficiency component of a project to be the incremental cost above the relevant baseline. That is, the incremental cost of installing a highly efficient product (or building a highly efficient building) instead of the typical product (or typical building). The EEU follows this same practice. We conclude that it is appropriate to use the same definition when determining what constitutes extraordinary costs for energy efficiency.

Over time, the EEU and the DPS have agreed on various baselines for many (although not all) types of projects.<sup>13</sup> We are persuaded that it is reasonable for the same baselines to be used when determining what constitutes extraordinary costs for energy efficiency. We will ask the Working Group to recommend to the Board how information regarding agreed-upon baselines could be provided to customers so that customers can determine what are the incremental costs of the energy efficiency investment. We also ask the Working Group to recommend to the Board how to address potential custom projects for which no baselines have been previously defined.

The second step is to determine what portion of the energy efficiency costs is actually paid by the customer. In this context, we agree with the DPS that any federal, state, or local grants or tax incentives that cover all or a portion of the project's costs should be taken into account when calculating the customer's costs, but do not agree that a project is ineligible if a customer received any grants or tax incentives for it. Rather, we define the customer's costs as the incremental costs actually incurred by a customer for installing a highly-efficient product or constructing a highly-efficient building less any government grants received for the project and less any tax incentives associated with the project.

The third step is to determine what level of costs (as defined above) would be considered extraordinary. The DPS recommended that annual EEC payments be taken into account for large customers when considering what level of costs is extraordinary, while acknowledging that this may be less appropriate for smaller customers. We conclude that an appropriate formula would be related to a customer's annual EEC payments, but would include a minimum dollar threshold. Linking the definition to a customer's annual EEC payments provides an appropriate way to scale

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13. For example, Vermont's residential and commercial building codes are the baselines for new construction projects.

the costs (it is reasonable that extraordinary costs would be higher for customers who use more electricity than for those who use less). The minimum threshold would help ensure that the costs associated with reviewing the applications do not outweigh the potential benefit of the customer's extra efficiency investment.

We are considering a formula that defines extraordinary costs as five times a customer's annual EEC payments for the most recent complete calendar year, and at least \$300.<sup>14</sup> However, before finalizing this formula, we would like to provide workshop participants with an opportunity to comment on it. Any participant wishing to comment on this proposed formula should do so on or before January 25, 2007.

#### *Additional UVM Recommendation*

UVM also recommends that the EEC exemption mechanism encourage customers to collaborate with their electric utility to determine if there are strategic initiatives that can be developed as part of the implementation of customer-driven efficiency improvements. Therefore, UVM asks whether the EEC exemption mechanism could be designed to help:

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14. In response to a request from the Board, Efficiency Vermont provided the Board with information on 412 commercial and industrial customers who completed projects (other than new construction projects) in 2005. (Also excluded were customers who claimed savings on more than one account in 2005, and customers for whom there appeared to be problems with the data.) The information provided included 2004 electricity consumption data (annual kWh and estimated peak kW), the annual kWh savings from the energy efficiency project, the incentive Efficiency Vermont paid for the project, and Efficiency Vermont's estimate of the customers' costs for the project. Using the 2004 electricity consumption information, Board staff estimated the customers' annual EEC charges, if the current EEC rates had been in effect during 2004 (current EEC rates were used because they are closer to the rates that will be in effect in the future; no adjustments were made to the electricity consumption information to reflect the savings resulting from the 2005 energy efficiency projects). Board staff then compared these annual EEC charges to the total amount spent on the projects, including both customer costs and incentive payments from Efficiency Vermont. This very rough comparison showed that 43 percent of the customers in the analysis implemented projects in 2005 whose total cost was at least 5 times the customers' estimated EEC payments, 24 percent of the customers implemented projects whose total cost was at least 10 times the customers' estimated EEC payments, and 10 percent of implemented projects whose total cost was at least 23 times the customers' estimated EEC payments.

In light of this information, and taking into account the many assumptions and approximations that were used in the analysis, defining extraordinary costs as five times a customer's annual EEC payments for the most recent complete calendar year may be reasonable. However, we recognize that workshop participants may have additional information that should be considered before we make a final determination on this issue. If any participant files such information, we will consider it at that time.

- identify projects that serve to target efficiency and conservation to locations, markets or customers where they may provide the greatest value; and
- foster collaboration between customers and host utilities so those project planners can consider strategies to best integrate customer-sponsored projects with utility load serving and resource planning activities.

UVM has identified two laudable goals that could help utilities with their long-term planning. While we support both these goals, we believe that the EEC exemption mechanism is not the best means of achieving them.

First, it would be more complicated to implement an EEC exemption mechanism that applied only to certain projects that provide the greatest value, rather than to any customer who meets the criteria for an exemption that are set forth in the statute and elaborated upon in this Order. There is a greater potential for customer confusion about who would be eligible for an exemption, and additional regulatory resources would be required to identify the areas, markets, or customers where projects may provide the greatest value.<sup>15</sup>

Second, while we could impose a requirement that customers applying for an EEC exemption prove that they have coordinated with their electric utility regarding resource planning activities, we decline to do so. We conclude that such a requirement could be burdensome, particularly for smaller customers whose energy efficiency measures would not, on their own, have a significant impact on utility load serving and resource planning activities.

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15. In our September 25, 2006, Order, we determined that the EEU should spend a portion of its funds in targeted geographic areas, and we created a working group to provide the Board with recommendations on which geographic areas should be targeted. In our January 8, 2006, Order regarding Geographic Targeting, we selected four geographic areas to be targeted by the EEU in 2007 and 2008.

One way of implementing an EEC exemption mechanism that applied only to projects that provide the greatest value would be to establish lower eligibility thresholds for projects located in the targeted areas (i.e., to use different definitions of "an extraordinary amount of energy efficiency" or "extraordinary costs for energy efficiency" for projects located in targeted areas). While this would be a relatively easy way of selecting areas where projects may provide the greatest value, additional regulatory resources would be required to develop appropriate definitions for projects in those areas. After considering the potential costs and benefits of this approach, we choose not to pursue it at this time.

*Ben & Jerry's Recommendations*

Ben & Jerry's recommends that the Board develop "a mechanism to opt out of the EEU program" that is based upon a customer's ability to achieve savings more cost-effectively than the EEU, and that the avoided EEC payments be used to determine the minimum amount spent on efficiency projects. Ben & Jerry's argues that if it could use its EEC payments to fund energy efficiency projects directly, it could implement more projects per year and achieve savings more cost-effectively than the EEU, thereby benefitting all Vermont ratepayers.

Ben & Jerry's recommendations are not consistent with the statute's requirements for an EEC exemption mechanism. The statute does not give the Board the discretion to base an EEC exemption upon a customer's ability to achieve savings more cost-effectively than the EEU. Therefore, we do not accept Ben & Jerry's recommendations for the design of an EEC exemption mechanism.

**B. Process**

The DPS recommends the following timeline for an EEC exemption application and review process:

May 1	Applicants file requests and documentation with the Board and DPS;
August 1	Efficiency Vermont or BED verifies project cost-effectiveness using statewide screening tool;
August 15	DPS and Contract Administrator present recommendations to the Board regarding exemption applications and notify applicants of their recommendations;
September 1	Board holds proceeding for consideration of exemption applications;
September 15	Board rules on exemptions that will be effective for the following year's EEC.

The DPS recommends this schedule so that information regarding any exemptions from the following year's EEC can be incorporated into the calculation of the next year's EEC rates as set forth in PSB Rule 5.300.

We are persuaded that the general process recommended by the DPS is reasonable. However, we believe it would be useful for the Working Group to discuss this process to address the following questions, as well as other implementation questions that the members may have:

- Should customers be required to file EEC exemption requests and supporting documentation with Efficiency Vermont or BED, and the Contract Administrator in addition to the Board and the DPS?
- Can a standard application form be developed?
- Is it necessary to allow three months for Efficiency Vermont or BED to verify project cost-effectiveness?
- Will site visits be required to verify project installation? If so, who will perform them?
- We believe paper filings are sufficient to consider EEC exemption requests. Does anyone disagree?
- Is two weeks sufficient time for the Board to rule on all exemption applications? What happens if the Board receives many applications?

#### *Timing Concern with Current Statute*

The schedule proposed by the DPS highlights an implementation issue associated with the current statutory language. The statute requires that, in order to receive an EEC exemption, a customer must acquire an extraordinary amount of energy efficiency or incur extraordinary costs on energy efficiency "during the preceding year." However, the annual EEC rates apply to service after January 1, and are calculated in the fall of the prior year.<sup>16</sup> In order to accurately calculate the EEC rates for the following year, the Board would need to know what customers, if any, would be exempt from paying some or all of the EEC in that year. Thus, the problem is that customers could be implementing energy efficiency through December that would qualify to

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16. Technically, the rates take effect with bills rendered on and after February 1; in practice this means service rendered after approximately January 1. In order for electric companies to provide customers with notice of the new rates in their December electric bills (so customers know the new rates before they use the service), the Board issues a decision by November 1 establishing the new EEC rates for the next calendar year. In order to meet this deadline, utilities and other parties provide a variety of data used to calculate the EEC rates to the Board and the DPS by September 15 of each year.

support an EEC exemption for the following year, but the EEC rates would have already been calculated by that time.

Alternatively, since the current statutory language does not require that EEC exemptions be determined on a calendar-year basis, the Board could allow customers to file for an EEC exemption at any time of the year, provide a set period of time to review an application, and allow the one-year EEC exemption to begin at any point during the calendar year. This would "disconnect" the determination of EEC exemptions from the development of annual EEC rates, and avoid the timing problem explained in the previous paragraph. However, there are drawbacks to this approach. Depending on the number of applications received (and granted), it could be more difficult and costly for utilities to keep track of who is exempt from paying the EEC at any given time. In addition, if a significant number of kWh and kW are exempt from paying the charge, it is possible that insufficient funds will be collected via the EEC. The EEC ratesetting mechanism provides a way to handle undercollections (by collecting the difference in the following year), but if the undercollections are large enough, this could cause cash flow problems for the EEU Fund.<sup>17</sup>

We currently believe that it is preferable to establish EEC exemptions on a calendar-year basis, along the schedule proposed by the DPS. However, this would require modifications to the current statutory language to allow sufficient time for customers to prepare and submit applications, and for appropriate review of those applications, prior to the calculation of EEC rates for the following calendar year.<sup>18</sup>

We would like to provide workshop participants with an opportunity to comment on our preliminary conclusion that it is preferable to establish EEC exemptions on a calendar-year basis, along the schedule proposed by the DPS, even if that requires statutory modifications. We are particularly interested in responses to the following questions (in addition to any other issues participants wish to raise):

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17. Statewide load growth could offset a certain amount of EEC exemptions. However, as the EEU increases its investment in energy efficiency measures pursuant to the Board's August 2, 2006, Order, statewide load growth is expected to decrease.

18. This presumes that the legislature does not choose to revisit the advisability of an EEC exemption mechanism, as recommended by the DPS.

- Should EEC exemptions be established on a calendar-year basis?
- What are the operational issues associated with establishing EEC exemptions on other than a calendar-year basis?
- Should the legislature be asked to modify the statutory language to allow sufficient time for customers to prepare and submit applications, and for appropriate review of those applications, prior to the calculation of EEC rates for the following calendar year?

Participants should also feel free to comment on the broader legislative issue raised by the DPS — should the legislature be asked to revisit the advisability of an EEC exemption mechanism. Any person wishing to file comments should do so on or before January 25, 2007.

### **C. Exemption Amount**

The statute requires the Board to establish a mechanism by which customers may apply to the Board for an exemption from "some or all" of the EEC payments the customers would otherwise owe.<sup>19</sup> Under the process proposed by the DPS, which we concluded above is generally reasonable, several entities will incur costs associated with reviewing customers' applications for an exemption from the EEC. A long-standing ratemaking principle is that customers should pay for the costs they cause their utility to incur. Consistent with this principle, it is appropriate for those customers who apply for an exemption from the EEC to be responsible for bearing the costs of reviewing their applications. We do not have specific estimates of the costs associated with reviewing EEC exemption applications, but we expect that the costs of reviewing the applications will vary along with the size and complexity of the energy efficiency investments used to support the applications.

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19. 30 V.S.A. § 209(d)(4).

In addition, it is important to consider the "system benefits" provided by the EEU's programs.<sup>20</sup> These system benefits accrue to all ratepayers, regardless of whether they participate in energy efficiency programs.

In light of these two factors, it is useful to consider the structure of the EEU's Commercial and Industrial Customer Credit Program. Participants in that program may receive up to 70 percent of their EEC payments back, if they make qualifying energy efficiency investments. The remaining 30 percent of participants' EEC payments are used to pay other entities' costs associated with measure screening and savings verification, as well as to contribute to the EEU's other activities in recognition of the system benefits those activities provide to all Vermonters, including Customer Credit Program participants.

We conclude that it is reasonable to establish the same parameters for the EEC exemption mechanism. That is, it is reasonable to allow qualifying customers to be exempt from paying 70 percent of the EEC charges they otherwise would owe, with the remaining 30 percent covering the costs of reviewing their exemption applications and contributing to the EEU's activities that provide system benefits to all customers.

#### **IV. CONCLUSION**

In this Order, we provide the broad outlines of a mechanism by which customers may apply to the Board for an exemption from 70 percent of the EEC. The Board's goal is to finalize the remaining issues associated with the implementation of the mechanism by mid-2007, thereby allowing customers an opportunity to apply for an exemption from the 2008 EEC.

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20. These system benefits include:

- reduced power purchases and transmission costs that a utility would otherwise have had to incur;
- reduced reserve margins that a utility would otherwise have had to meet;
- reduced ancillary service charges that a utility would otherwise have had to incur;
- reduced transmission line losses that a utility would otherwise have experienced;
- reduced costs of hedging against volatility; and
- deferred need for transmission or distribution system upgrades.

*See*, Order of August 2, 2006, Re EEU Budgets for 2006, 2007, and 2008, at 23-24 for a more detailed explanation of the system benefits of energy efficiency investments.



In this Order we also provide workshop participants with an opportunity to comment on the Board's proposed formula for defining "extraordinary costs," and create an informal Working Group to provide recommendations to the Board on various technical issues. Finally, we provide workshop participants with an opportunity to comment on the Board's preliminary conclusion that it is preferable to establish EEC exemptions on a calendar-year basis, even if that requires statutory modifications.

### **V. ORDER**

1. Pursuant to 30 V.S.A. § 209(d)(4), the mechanism by which a customer may apply to the Board for an exemption from 70 percent of the customer's Energy Efficiency Charge ("EEC") payments shall be as outlined herein. This mechanism shall take effect in 2007, with customers able to apply for an exemption from the 2008 EEC.

2. Any participant that would like to comment on the Board's proposed formula for defining "extraordinary costs" shall do so on or before January 25, 2007.

3. Any participant that would like to comment on the Board's preliminary conclusion that it is preferable to establish EEC exemptions on a calendar-year basis, even if that requires statutory modifications, shall do so on or before January 25, 2007.

4. An informal Working Group is created to provide recommendations to the Board on the following technical issues:

- What technical standards should be used to determine what constitutes an extraordinary amount of energy efficiency?
- How can information regarding agreed-upon baselines be provided to customers so that customers can determine what are the incremental costs of the energy efficiency investment?
- How can baselines be determined for potential custom projects for which no baselines have been previously defined?
- Should customers be required to file EEC exemption requests and supporting documentation with Efficiency Vermont or the City of Burlington Electric Department ("BED"), and the Contract Administrator in addition to the Board and the Vermont Department of Public Service ("DPS")?
- Can a standard application form be developed?

- Is it necessary to allow three months for Efficiency Vermont or BED to verify project cost-effectiveness?
- Will site visits be required to verify project installation? If so, who will perform them?
- Is it necessary for the Board to hold a workshop to consider all exemption applications, or could some decisions be made on the basis of a paper record?
- Are there any other implementation issues that the Board should address?

5. Efficiency Vermont, BED, and the Energy Efficiency Utility Contract Administrator shall participate in the Working Group. The DPS, other workshop participants, and members of the public are invited to participate.

Dated at Montpelier, Vermont, this 8<sup>th</sup> day of January, 2007.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: January 8, 2007

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*